

The Nomination Fight and the Republican Quandary

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Justice John Paul Stevens' announcement that he will be retiring from the Supreme Court means that the US will never have another member of the Supreme Court who saw Babe Ruth play baseball, let alone call his home run in the 1932 World Series. It also means that it is almost certain that a loud and partisan nomination fight will occur, probably in the summer, and help set the stage for the 2010 midterm elections.

The confirmation narrative will likely not look too different from the one surrounding Justice Sonia Sotomayor. President Obama will nominate a judge with a strong resume including a degree from an elite university. The judge will have a moderately liberal voting record and perhaps be a person of color, a woman or both. Liberal interest groups will support the nominee, but some more progressive groups will be critical of the candidate's pro-business history. The right wing will attack the nominee as yet another sign of the imminent socialist apocalypse and identify minor scandals and gaffes which they will seek to make into bigger issues. The nomination fight will end with the nominee being confirmed with almost unanimous Democratic support and perhaps the support of a small handful of Republican senators as well.

While the final outcome and general outline of the nomination process are unlikely to offer any surprises, the way these events play out and the political strategies and rhetoric which both parties employed are significant because they will, at least partially, frame the fall elections. While the nomination fight will share the headlines with the economic problems which the country still faces and ongoing developments in Afghanistan, Iraq and elsewhere, the nomination is significant because it will probably focus largely on social issues and more unadulterated partisanship than the other major issues facing the countries.

During the nomination fight, each party will seek to portray the other as an extremist. The Democrats will point to the right wing opposition to the nominee as proof of Republican intolerance and refusal to take governance seriously, while the Republicans will go back to the well of calling the nominee too liberal and out of touch with real Americans. There are also potential pitfalls in this nominating process for both parties. Obvious pitfalls for the Obama and the Democratic Party include a scandal arising around the nominee due to insufficient vetting or the more likely possibility that the nominee over the course of his or her academic or legal writing has taken positions that, while more or less mainstream in scholarly circles on the left or right, lend themselves to attack as elitist or out of touch with America. This might be called the Lani Guinier scenario.

For the Republican Party the major pitfalls are the inevitability that they will again show themselves to be the party of no, and the likelihood that the party will again fail in their effort to stop the nomination. There is the additional possibility the Republican Party will not be able to rein in their more radical elements. A six week spectacle in which the opposition to the nominee is dominated by images of Tea Partiers and radical rhetoric at a time when the majority of

Americans are increasingly unfazed by government regulations and frightened by far right solutions to social issues such as banning abortion outright will not help the Republican Party.

The Republicans may well have peaked too early for the 2010 election cycle anyway. Whatever energy they generated late in 2009 and early in 2010 seems to have culminated not with the 2010 midterm elections, but with the election of Scott Brown in January. Obama's eventual passage of the health care bill seems to have breathed new life into the presidency and helped take a fair amount of momentum from the Republican Party and the right wing. The nomination fight will be a natural way for the right to try to reclaim this momentum, but they should proceed very carefully as there more bad outcomes than good ones for the Republicans that will come from a long fight which they probably will not win and during which they will show themselves to be more out of touch with the American people than the Democrats they seek to attack.

The nomination will give both parties a chance to set at least part of the agenda for November, but the Republicans have a much tougher road ahead of them. The rational thing for them to do might be not to bother with the fight at all, making the nomination a shorter process which might show that the Republicans in the Senate are interested in working with the Democrats occasionally and are not incapable of governing. This, however, will not be possible due to a base that is increasingly difficult to control and blinded by their hatred of all things proposed or supported by the Democrats.